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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,510	01/06/2004	Robert W. Jones	14991.01	3347
7590	03/07/2005		EXAMINER	
Richard C. Litman LITMAN LAW OFFICES, LTD. P.O. BOX 15035 Arlington, VA 22215			SHELBOURNE, KATHRYN E	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/751,510	JONES, ROBERT W.
Examiner	Art Unit	
Kathryne E. Shelborne	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 06 January 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-11 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 06 January 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on January 06,2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.
2. The abstract of the disclosure is objected to because an Abstract should be only one paragraph. Correction is required. See MPEP § 608.01(b).

### ***Claim Analysis***

3. Claim 4 is noted as depending from Claim 4. For examination purposes, the Examiner is interpreting Claim 4 to depend from Claim 1. Corrections should be indicated in correspondence.

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### ***Claim Rejections - 35 USC §103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dugan (US Patent #3,855,132) in view of Silva (US Patent #5,536,406).
6. Regarding claim 1, Dugan teaches a rain gutter with a porous foam material fitted therein. (see the Abstract). Dugan teaches a rain gutter fitted with a reticulated porous

foam material such as polyurethane. (see column 1, lines 37-39). The filler may be flexible. (see column 2, line 27).

7. Dugan differs from the claimed invention in that it fails to teach the foam material having the desired shape.

8. Silva teaches a drain filtering device having a cross section in the general form of a right triangle, the filtering device having a generally horizontal upper side having front and rear edges, a generally vertical rear side perpendicular to the upper side and having an upper edge coincident with the rear edge of the upper side and a lower edge, an angled side extending between the front edge of the upper side and extending to a lower point forward of the lower edge of the rear side, and a bottom side parallel with the upper side and extending forward from the lower edge of the rear side to the lower point, the lower side being formed by the truncation of the generally triangular filter element between the rear side and the angled side. (see Figure 1 and the Abstract).

9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the filler of Dugan with the shape of the filtering device of Silva so that the debris that collects in the gutter is carried along the water until it makes contact with the inclined upper face and is forced up the incline until the overflow debris flows over the side of the gutter thereby cleaning same and preventing the downspout from becoming clogged.

10. Regarding claim 2, Dugan teaches wherein the open cell porous foam material has an average of 10 pores per linear inch. Since the foam material is shown to be three dimensional, it would have been obvious to one of ordinary skill in the art at the time the

invention was made that the open cell porous foam material would meet the limitation of from about 10 to about 20 cells per square inch. (see column 2, lines 36-38).

11. Regarding claim 4, the combined references Dugan and Silva teaches the filler may be cut to a larger size and that there can be more than one piece of foam compressed together to fill the trough. (see Dugan, column 2, lines 27-34). Therefore, the limitation of wherein the filter element is about four feet in length is seen to be an obvious in that it is easily molded to fit the gutter shape desired.

12. Dugan also teaches a filler in combination with a rain gutter having a back wall, a bottom wall, and a front wall having an upper lip and defining a upper opening between the back wall and the front wall, the filter element being inserted into the rain gutter such that the upper side spans the upper opening between the back wall and the upper lip of the front wall, the inner side bearing against and coextensive with the back wall, and the bottom side bearing against and extending outward to the lower point along the gutter bottom wall and whereby liquid may enter the gutter upper opening and travel through the filler into the void, for flow to a gutter liquid outlet while leaves and other debris are trapped on the upper side of the filler. (see Dugan, Abstract).

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13. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dugan in view of Silva as applied to claim 2 above, and further in view of Etani (US Patent #3,947,362).

14. The combined references Dugan and Silva are relied upon for the reasons stated above. The combined references teach wherein the open cell porous foam material may be flexible polyurethane foam. (see Dugan at column 1, lines 37-39 and column 2, lines 26-27).

15. The combined references Dugan and Silva differ from the claimed invention in that they fail to teach wherein the open cell porous foam material is polyether foam. (claim 3).

16. Etani teaches that open-celled polyurethane foam include polyether polyurethane. (see column 2, lines 7-10 and 29-30 and column 1, lines 45-47).

17. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the specific polyether foam such that forces within the foam body tend to maintain original shape and to deepen particle penetration.

18. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dugan in view of Silva as applied to claim 1 above, and further in view of Allen (US Patent #5,522,183).

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19. Dugan and Silva are relied upon for the reasons stated above.

20. Regarding claim 5, Dugan also teaches a filter in combination with a rain gutter having a back wall, a bottom wall, and a front wall having an upper lip and defining a upper opening between the back wall and the front wall, the filter element being inserted into the rain gutter such that the upper side spans the upper opening between the back wall and the upper lip of the front wall, the inner side bearing against and coextensive with the back wall, and the bottom side bearing against and extending outward to the lower point along the gutter bottom wall and whereby liquid may enter the gutter upper opening and travel through the filter into the void, for flow to a gutter liquid outlet while leaves and other debris are trapped on the upper side of the filter. (see Dugan Abstract).

21. Dugan and Silva differ from the claimed invention in that they fail to teach the filter has an angular side extending between the bottom side at the lower point to the front

wall upper lip, defining a void between the outer angular side and the front wall and the bottom wall of the rain gutter. (claim 5).

22. Allen teaches a triangular form filter in a gutter assembly. Also, Allen teaches the triangular form filter performs the same function as claimed in the invention and which when placed in a gutter would have an angular side extending between the bottom side at the lower point to the front wall upper lip, defining a void between the outer angular side and the front wall and the bottom wall of the rain gutter. (see column 3, lines 1-19, column 4, lines 56-60, Figures 1 and 2 and the Abstract).

23. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the triangular foam filter of Allen in the gutter assembly of the combined references Dugan and Silva in order to allow for water to both enter and flow within a gutter allowing both longitudinal and transverse flow without hindrance while preventing the entrance of leaves and debris.

24. Regarding claim 8, Dugan teaches wherein the gutter is mounted on a building structure below the eave of a roof such that rainwater draining from the roof enters the gutter through the filler upper side. (see the Abstract).

25. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dugan and Silva in view of Allen as applied to claim 5 above, and further in view of Hunt (US Patent #5,103,601).

26. The combined references Dugan, Silva and Allen are relied upon for the reasons stated above.

27. The combined references Dugan, Silva and Allen differ from the claimed invention in that they fail to teach that the gutter has an inner lip portion extending

inward and downward from the front upper lip so as to bear against the upper side of the filter element and further comprising a plurality of spaced gutter spikes extending through the gutter front upper lip and the back wall into the building structures for securing the gutter to the building structure, the filler fitting below the gutter spikes. (claims 7 and 9).

28. Hupt teaches a gutter has an inner lip portion extending inward and downward from the front upper lip so as to bear against the upper side of the filter element and further comprising a plurality of spaced gutter spikes extending through the gutter front upper lip and the back wall into the building structures for securing the gutter to the building structure, the filler fitting below the gutter spikes. (see Figure 1, column 2, lines 62-66 and column 4, lines 60-63).

29. ~~It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the gutter of the combined references Dugan, Silva and Allen with the gutter of Hunt in order to prevent debris build up and aid in the self cleaning of the gutter.~~

30. Claims 6, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dugan, Silva and Etani as applied to claim 3 above, and further in view of Allen.

31. Dugan, Silva and Etani are relied upon for the reasons stated above.

32. Regarding claim 6, Dugan also teaches a filter in combination with a rain gutter having a back wall, a bottom wall, and a front wall having an upper lip and defining a upper opening between the back wall and the front wall, the filter element being inserted into the rain gutter such that the upper side spans the upper opening between the back wall and the upper lip of the front wall, the inner side bearing against and coextensive

with the back wall, and the bottom side bearing against and extending outward to the lower point along the gutter bottom wall and whereby liquid may enter the gutter upper opening and travel through the filter into the void, for flow to a gutter liquid outlet while leaves and other debris are trapped on the upper side of the filler. (see Dugan Abstract).

33. Dugan and Silva differ from the claimed invention in that they fail to teach the filter has an angular side extending between the bottom side at the lower point to the front wall upper lip, defining a void between the outer angular side and the front wall and the bottom wall of the rain gutter. (claim 6).

34. Allen teaches a triangular foam filter in a gutter assembly. Also, Allen teaches the triangular foam filter performs the same function as claimed in the invention and which when placed in a gutter would have an angular side extending between the bottom side at the lower point to the front wall upper lip, defining a void between the outer angular side and the front wall and the bottom wall of the rain gutter. (see column 3, lines 1-19, column 4, lines 56-60, Figures 1 and 2 and the Abstract).

35. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the triangular foam filter of Allen in the gutter assembly of the combined references Dugan and Silva in order to allow for water to both enter and flow within a gutter allowing both longitudinal and transverse flow without hindrance while preventing the entrance of leaves and debris.

36. Regarding claim 10, the combined references Dugan and Silva make obvious the limitation wherein the fillers are about four feet in length and a plurality of fillers are inserted into a length of the gutter so as to extend the full length of the gutter. Since Dugan teaches the filler may be cut to a larger size and that there can be more than one

piece of foam compressed together to fill the trough. (see Dugan at column 2, lines 27-34).

37. Dugan and Silva differ from the claimed invention in that they fail to teach that the filter elements are easily removed from the gutter for cleaning and are easily reinstalled into the gutter. (claim 11).

38. Allen teaches wherein the filter elements are easily removed from the gutter for cleaning and easily reinstalled into the gutter. (column 4, lines 60-61).

39. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the filler of Dugan and Silva with the teachings of filter Allen in order for cleaning of the filter.

### *Conclusion*

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40. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn E. Shelborne whose telephone number is (571)-272-1043. The examiner can normally be reached on Monday - Friday.

41. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (571)-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

42. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kathryne E. Shelborne  
Examiner  
Art Unit 1723

February 25, 2005

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